

**Petitioner's Instructions for Expungement
(Sealing) of Criminal Records
(Minn. Stat. § 609A.01 - .03)**

Please read all instructions before filling out paperwork. You will need to make additional copies if you are seeking to expunge more than one file.

- **A Motion to Expunge is a complicated procedure.**
- **If you have any questions or are in need of more assistance, you should contact an attorney.**
- **The court administrator's office cannot give you legal advice.**

EXPUNGEMENT OR SEALING OF A RECORD – WHAT IT MEANS

Minn. Stat. § 609A states that the expungement of criminal records remedy is limited to a court order sealing records and prohibiting disclosure of their existence or their opening except under court order or statutory authority. Nothing in the law authorizes destruction of records or their return to the subject. A judge of the District Court must hear this petition.

Once sealed, a record will not be available to the general public. However, Minn. Stat. § 609A.03, subd. 7, states that law enforcement agencies, prosecution or correctional authorities may seek an order signed by a judge to re-open a sealed case for the purpose of a criminal investigation, prosecution or sentencing. The records may be opened for the purposes of evaluating a prospective employee of a criminal justice agency, without a court order, pursuant to Minn. Stat. § 609A.03, subd. 7.

YOU MAY QUALIFY FOR AN EXPUNGEMENT UNDER MINNESOTA STATUTE § 609A IF:

- The charges were dismissed, you were found not guilty, or the case did not otherwise result in a conviction.
- You were charged with a controlled substance offense - the proceedings have been dismissed and discharged.
- You were a juvenile prosecuted as an adult.
- The Board of Pardons has granted you a pardon extraordinary.

In the situations listed above, the court can order all records of that criminal case kept in Minnesota to be sealed. If there is no court file (the prosecutor did not file formal charges or the grand jury did not file an indictment) and you've had a clean record for the past 10 years, a petition to the court is not necessary to expunge your arrest record. You should contact the arresting agency and/or the BCA (Minn. Stat. § 299C.11(b)).

If you were convicted in any other situation, your case does not meet the criteria under Minn. Stat. § 609A. Expungement of a conviction not meeting the 609A criteria is possible, but rare. Serious crimes like murder, aggravated assault, driving while intoxicated, and sex offender crimes are never expunged. Less serious crimes can be expunged only if you can convince the court that you have made changes in your life that demonstrate you are very unlikely to commit another crime, and that the benefit to you from an expungement outweighs the burden of sealing the records.

To request expungement of a conviction not meeting the 609A criteria, check the 4th box of item #9 of the Petition which states "I was convicted but I have rehabilitated myself. The benefit to me outweighs the disadvantage to the public and the burden on the court." You should also know that an order expunging a conviction may provide only for expungement of the record held by state courts and may not necessarily expunge records held by state or local agencies.

PROCEDURES FOR EXPUNGEMENTS

A. COMPLETELY FILL OUT A SEPARATE PETITION AND ORDER FOR EACH CASE YOU WANT EXPUNGED:

1. NOTICE OF HEARING AND PETITION FOR EXPUNGEMENT

You must fill out this document completely and sign your name in front of a notary public (or deputy court administrator). IT IS MANDATORY that you list all prior and pending criminal charges in this or any other state on this petition as well as any stays of adjudication, continuances for dismissal, or pretrial diversions in any jurisdiction. If you are unsure about your court records, most Minnesota counties have public access terminals where you may look up your case information. The Minnesota Bureau of Criminal Apprehension (BCA) will provide a printed record for a fee. You may contact them at 651-793-2400 for more information.

Obtain a hearing date from the court administrator's office to be inserted in the notice. This date must be more than 60 days from the date notice is mailed plus 3 days for mailing.

2. PROPOSED ORDER TO EXPUNGE CRIMINAL RECORDS

You must complete a separate order for each case that you want expunged. There are two types of orders: Order Sealing Record/Conviction (if you were convicted of the offense) or Order Concerning Sealing of Records/No Conviction. Use the one appropriate to your situation.

3. REQUEST FOR WAIVER OF FILING FEE—IN FORMA PAUPERIS (IFP)

If you will be seeking waiver of the filing fee, additional papers need to be completed. You will need to ask for a waiver form (IFP) specifically. Fee waiver forms are available at www.courts.state.mn.us/ctforms. You will have to provide financial information to have the court determine whether you qualify to have the fee waived. The fee or the order waiving the fee must be submitted when the petition is filed.

B. MAKE COPIES OF THE COMPLETED FORMS YOU WILL NEED FOR SERVICE ON EACH AGENCY AND THEIR ATTORNEYS.

Minn. Stat. §609A.03, subd. 3 requires that a petition must be served on ALL state and local agencies and their attorneys whose records would be affected by the proposed order; for example, the Minnesota Bureau of Criminal Apprehension, the Attorney General's Office, the local police department, the prosecuting attorney, the sheriff's department, county attorney, department of corrections (probation).

1. Notice of Hearing and Petition(with the scheduled hearing date completed)
2. The unsigned proposed Order you are seeking to have the judge issue.

C. PROCESS FOR SERVICE

You are responsible to see that service is done properly. Court staff cannot serve the documents for you. Service needs to be done by a disinterested third party (someone not related to the case) who is 18 or older. That person must mail a copy of all required documents and complete the Affidavit of Service and sign in front of a notary or a deputy court administrator. Service must be complete at least 63 days prior to the scheduled hearing date.

D. FILING THE PAPERWORK WITH DISTRICT COURT

After copies of the documents have been served on all required agencies, the “Original” Notice of Hearing and Petition for Expungement, the proposed order along with written proof (Affidavit of Service) that all agencies have been served must be filed with the court administrator’s office. File your papers as soon as you have completed the notification process.

A civil filing fee is required when filing the documents (check with the court administrator in the county you are filing for correct fee amount) unless you are unable to pay and obtain an order from the court waiving the fee (you must complete and file an Affidavit for Proceeding In Forma Pauperis). No filing fee is required if you were not convicted in the case. Inform court personnel that you were not convicted and the fee is waived by statute (Minn. Stat. §609A.03, subd. 1).

E. THE COURT HEARING

You must appear at the hearing. Bring your copies of the documents along with you to court for your own reference. The original documents should already be in the court file.

At the hearing, the Judge will review your petition and any attachments you have submitted. The Judge will also consider any information presented by the prosecutor, any of the various law enforcement agencies and the victim. The victim has the right to submit an oral or written statement to the court.

The Judge may or may not grant the expungement. The Judge may sign the proposed order that you have provided (granting or denying your request), or may prepare his or her own order. The Judge may deny expungement if your request does not meet the requisite qualifications even if no one objects.

When the order is signed, the court administrator's office will send a copy of the order to all the agencies named in the order to receive notice. If your request was granted, these agencies have 60 days to appeal the order. Your record remains public during this period and while any appeal is pending. If no appeal is filed, the record will be sealed 60 days after the filing of the order. It is a good idea to obtain a certified copy of this order for your own records. A certified copy fee will be charged unless you have an in forma pauperis (IFP) order.

REMINDER:

A motion to expunge is a complicated procedure.

If you have any questions or are in need of more detailed assistance, you should contact an attorney for advice.

The court administrator’s office cannot give you legal advice.